

# UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

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In Re Applications of: ) MM Docket No. 99-153  
)  
READING BROADCASTING, INC. ) File No.: BRCT-940407KF  
)  
For Renewal of License of )  
Station WTVE(TV), Channel 51 )  
at Reading, Pennsylvania )  
)  
and )  
)  
ADAMS COMMUNICATIONS ) File No.: BPCT-94063KG  
CORPORATION )  
)  
For Construction Permit for )  
a New Television Station to )  
Operate on Channel 51, )  
Reading, Pennsylvania )

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Before the  
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Washington, D.C. 20554

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Room TW-A363  
FCC  
445 12th Street, N.W.  
Washington, D.C. 20554

Monday,  
May 8, 2000

The parties met, pursuant to the notice of the  
Judge, at 10:03 a.m.

BEFORE: HONORABLE RICHARD L. SIPPEL  
Administrative Law Judge

APPEARANCES:

On Behalf of Reading Broadcasting, Inc.:

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APPEARANCES: (Continued)

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On Behalf of the Federal Communications  
Commission:

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1 insofar as there are outstanding objections.

2 Before we move into that, does anybody have  
3 anything preliminary that they wish to say?

4 (No response.)

5 JUDGE SIPPEL: No, hearing nothing, okay.

6 I'm going to start with -- I am only interested in  
7 the objections. Objection to document request No. 13. That  
8 is the bank letters, the banking, the information with  
9 respect to financial commitments, bank letters, that type of  
10 thing.

11 As I understand it Mr. Cole has already provided  
12 you with a bank letter?

13 MR. SOUTHARD: Your Honor, I'm sorry. Request 13  
14 is broader than that.

15 JUDGE SIPPEL: Well, it starts -- it is broader  
16 than that. As I said, it starts with all bank letters.

17 MR. SOUTHARD: That would be subpart A, right.

18 JUDGE SIPPEL: Yes. Okay, now, you do have a bank  
19 letter; is that right?

20 MR. SOUTHARD: We've received a copy of what  
21 appears to be the commitment letter or a commitment to a  
22 commitment.

23 JUDGE SIPPEL: All right. Well, it's a bank  
24 letter; is that right?

25 MR. SOUTHARD: Correct. Correct.

1 JUDGE SIPPEL: All right. And I have already made  
2 a determination in another context that I am not going to  
3 permit discovery to try -- that may be seeking to expand  
4 this case into a financial issue.

5 Now, how much more -- how much -- you have this  
6 letter and you will be able to ask questions about this  
7 letter of Adams' principles. How much more do you think you  
8 need and why you need it?

9 MR. SOUTHARD: Well, with respect to the bank  
10 information, particularly we were looking for communications  
11 from Adams which would indicate representations from them  
12 about what they needed the commitment for, what their  
13 intentions were, what their expectations were with respect  
14 to obtaining financing, or hopefully representations  
15 regarding their expectations as to the likelihood of  
16 obtaining the license, or being successful in this action,  
17 or perhaps representation that it's really not a concern  
18 because we don't intend to get the license. We are going to  
19 end up settling this case, so don't really bother yourself  
20 too much.

21 JUDGE SIPPEL: In other words, whether or not this  
22 is just an accommodation letter --

23 MR. SOUTHARD: Exactly.

24 JUDGE SIPPEL: -- or finance letter?

25 MR. SOUTHARD: Exactly.

1 JUDGE SIPPEL: Commitment letter. Okay.

2 Briefly, Mr. Cole.

3 MR. COLE: Your Honor, I'm not aware of any such  
4 documents. Certainly none have been provided to me by  
5 Adams, in addition to which if -- again, it may be this is  
6 jumping the gun a little bit, but to the extent, as I  
7 indicated in my opposition to the motion to stay discovery  
8 dates, Reading has been on notice of the identity of the  
9 bank official and the bank for six years. And had they  
10 wanted to initiate discovery with respect to the bank  
11 official, they could have done so back on April 3rd or even  
12 before then when discovery opened on this issue.

13 Having failed to do that, I think it's  
14 significantly late for them to be pursuing this, and it does  
15 seem to me a fairly speculative juncture or a fairly  
16 speculative exercise on their part. They have had the  
17 opportunity to depose at some length of Mr. Gilbert, who I  
18 think the record does reflect was the primary Adams'  
19 official engaged in preparing the application. They have  
20 also deposed all of the other officers and directors of  
21 Adams with respect to the preparation of the application.

22 If all they can point to is some vague hope that  
23 there may be some document floating around, some smoking  
24 gun, you know, I think that that's a very slim read on which  
25 to rest at this point.

1 JUDGE SIPPEL: Okay. Mr. Shook?

2 MR. SHOOK: I have nothing to add.

3 JUDGE SIPPEL: Well, to be consistent with my  
4 previous ruling, I agree with Mr. Cole's arguments  
5 essentially that it's speculative, it's a fishing  
6 expedition. I know, you know, what you would maybe hope to  
7 find, but there is nothing -- the modus operandi here, I  
8 have seen nothing that would trigger that kind of a -- that  
9 there would be a reasonable cause, if you want -- probably  
10 cause, if you want to use that standard, to go down this  
11 road.

12 MR. SOUTHARD: Your Honor, if I may.

13 JUDGE SIPPEL: Yes, quickly.

14 MR. SOUTHARD: I understand the position there.  
15 Perhaps the reason we haven't seen anything, however, is  
16 because we haven't received anything.

17 JUDGE SIPPEL: Well, you know, you did get -- you  
18 do have the benefit of, and this carriers through with a lot  
19 of this, what we are doing this morning, you have a lot of  
20 leverage with adverse inferences. But the adverse  
21 inferences, and I am going to caution me, myself, and you on  
22 that also, the adverse inferences with respect to documents  
23 which probably should be there, if the business plan is in  
24 accordance with the way Adams represents that there should  
25 be certain things that should be in their own interest that



1     they would want to produce. And if those things are  
2     lacking, you do have the benefit of an adverse interest; at  
3     least you can certainly request an adverse interest. I am  
4     certainly going to look at it in that respect.

5             However, this is a different area. This is really  
6     what you are saying is -- what you are looking for, well,  
7     you have stated what you are looking for. And my reaction  
8     to it is that it's too speculative. It seems like a fishing  
9     expedition, and I think that there is more important things  
10    to do. All right?

11            MR. SOUTHARD: Very good. Thank you.

12            JUDGE SIPPEL: That's it.

13            Now, we are still on document request No. 13, and  
14     these are the requests for which there has been an objection  
15     as opposed to an inadequate explanation or an inadequate  
16     production.

17            So moving down to subparagraphs (b), (c), (d) and  
18     (e), which are -- and I'm going to very briefly categorize  
19     these. (B) being for budget, (c) transmit of site. I have  
20     already given you relief with respect to a transmit of site  
21     in another discovery context, correct?

22            MR. SOUTHARD: We received an executed subpoena  
23     for the --

24            JUDGE SIPPEL: Well, that's pretty good.

25            MR. SOUTHARD: -- referring to, the deposition of

1 the transmitter.

2 JUDGE SIPPEL: Yes.

3 MR. COLE: Your Honor, if I might interject at  
4 this point. As I understood your ruling signing the  
5 subpoenas, it was not a prejudgment with respect to whether  
6 or not discovery relative to the issues set forth in the  
7 subpoena should go froward or could go forward. It was  
8 simply the ministerial signing of a subpoena in anticipation  
9 that a notice of deposition might walk in the door, at which  
10 point there would be an opportunity to oppose that notice of  
11 deposition, and then the issue would be joined.

12 I don't think it's fair, certainly to Adams, to  
13 suggest at this point that that issue has already been  
14 decided and ruled on because we never had an opportunity to  
15 address it, and we still haven't because, as far as I'm  
16 aware, no notice of that deposition has in fact been filed.

17 JUDGE SIPPEL: Well, you know, I understand.  
18 That's a different issue. You've got some very excellent  
19 procedural points that you have raised, and I haven't been  
20 able -- I am trying to address something that's more focused  
21 right now in a different direction.

22 All I am saying is, is that I made a deliberate  
23 decision to sign a document which indicated that the  
24 transmitter site information would be relevant, and I also  
25 made a point, I think, to say that it didn't seem to be too

1 burdensome. I mean, this should not be that big of a deal  
2 to come up with transmitter site documentation.

3 So that could be mooted out very quickly. I mean,  
4 all this procedural problems that you are seeing with how  
5 things are being conducted can be easily remedied. I mean,  
6 I will cancel a deposition or a subpoena in an instant if  
7 the information is being made available.

8 MR. COLE: But, Your Honor, if I don't have to  
9 make the information available, why should I have to worry  
10 about that?

11 If I am not under any obligation because of their  
12 untimeliness to produce information, why should I feel like  
13 I have a gun to my head to produce the information;  
14 otherwise, I may lose those arguments?

15 JUDGE SIPPEL: Well, it's because -- I'll tell you  
16 why from where I am sitting. We do have hearing dates that  
17 are set to go, and what I am trying to do is be sure that I  
18 have a record that's got all the relevant information that I  
19 feel I need to make a decision. And I don't want things to  
20 get slowed down because there has been some kind of --  
21 whether somebody has sat on their rights, or somebody has  
22 been a little slow or a lot slow, or people are not reacting  
23 as they should be reacting. That's really not what I am  
24 here to decide. I'm not here to give an A, B, C, or D as to  
25 somebody's discovery efforts. I am trying to figure out how

1 to get this case on the road --

2 MR. COLE: Well, Your Honor, they have the  
3 burden --

4 JUDGE SIPPEL: -- and keep it on the road.

5 MR. COLE: They have the burden to proceed.

6 JUDGE SIPPEL: I understand.

7 MR. COLE: If they fail in that regard, I don't  
8 believe it's appropriate for you to continue urging them,  
9 directing them how to conduct their discovery. They have  
10 their discovery. They have their interests to protect. if  
11 they choose not to do it, I don't think it's appropriate for  
12 you to take sides and says, well, we'll give them more time.  
13 We will ask them to do this, we will ask them to do this,  
14 and we'll, you know, suggest to Mr. Cole that he could moot  
15 all these other things out just by coughing up these  
16 documents or what have you.

17 I don't think that's appropriate, Your Honor, and  
18 I say that with all due respect. But I --

19 JUDGE SIPPEL: Has there been an objection to the  
20 production of transmitter site information or documents? Is  
21 that --

22 MR. COLE: Yes.

23 JUDGE SIPPEL: There has been a formal objection  
24 to that?

25 MR. COLE: Yes.

1 JUDGE SIPPEL: For what reason?

2 MR. COLE: It's outside the scope of the issue.

3 JUDGE SIPPEL: Well, there is a motion to compel  
4 with respect to that information, and I feel, you know,  
5 considering all the arguments, that there is relevance to  
6 the transmitter site.

7 I don't see that -- and the reason is, I'll state  
8 the reasons again because I don't see that it's extremely  
9 burdensome, and I think that there is more an objective --  
10 you are going to get more of an objective reaction to  
11 whether or not things exist with respect to a transmitter  
12 site as opposed to -- as compared to going down the road on  
13 financial data, which gets to be a very slippery slope.  
14 This should be a very clear issue, clean issue.

15 So, you know, I've had this issue presented to me  
16 in two different context; one with respect to an  
17 enforcement -- a subpoena to get the information from  
18 another source, and one with respect to a motion to compel  
19 for documents that you have already been asked to produce.

20 So what difference does it make which way the  
21 information comes? I'm not taking sides on this at all. I  
22 don't understand. I just -- I understand your objections on  
23 these individual pieces as they come up. But in terms of  
24 the context of what we are trying to accomplish here in  
25 terms of meeting a trial date when I've made a determination

1 I think this is relevant discovery information, I don't  
2 understand why it has to go any further than that.

3 MR. COLE: All right. Well, if that's your  
4 ruling, Your Honor, that's your ruling.

5 JUDGE SIPPEL: All right. Well, let me -- as I  
6 say, I don't want to bring in another issue that -- other  
7 issues that have to do with your pending motion, which I'll  
8 get to later before we finish here, by trying to get this,  
9 what I consider to be very fundamental rulings out of the  
10 way first.

11 Documents relating to a potential studio site  
12 considered for the application, now I would put that in the  
13 same category as the transmitter site. If it's there, it's  
14 not going to be there in great volume. It's going to be  
15 easy to produce, and it's not going to invite an awful lot  
16 of questions. So I'm going to allow that to be discovered.

17 Documents relating to staffing and/or recruitment  
18 sources, same response, that is, the same ruling.

19 However, when you are getting down to the drafts  
20 of the applications and documents concerning or relating to  
21 such drafts, I'm going to again some argument from Mr.  
22 Southard.

23 Mr. Southard, are you going to handle these  
24 issues?

25 MR. SOUTHARD: Yes. Yes.

1 JUDGE SIPPEL: Would you please address that?

2 This is getting into this business again of asking  
3 for a whole bunch of things and hoping something is there.  
4 That's how I am looking at it.

5 MR. SOUTHARD: With respects to the drafts, Your  
6 Honor, and after we -- we would like to perhaps go back to  
7 budgets because I think we skipped over that.

8 JUDGE SIPPEL: Did I skip budgets?

9 MR. SOUTHARD: Yes.

10 JUDGE SIPPEL: Let me say that right now. Yes,  
11 the budgets, I think, would be for the same reason, the  
12 budget information, that is, subparagraph (e), would be  
13 relevant and discoverable, basically the same --

14 MR. COLE: Notwithstanding your ruling about  
15 financial issues?

16 JUDGE SIPPEL: Notwithstanding my ruling about  
17 financial issues, that's right. They are not going to go  
18 down -- there is not going to be an inquiry -- let me say  
19 this very categorically. There is not going to be an  
20 inquiry about the adequacy of the financing of this company  
21 or this project based upon what is or is not in budgets.

22 Budgets simply is how much are things going to  
23 cost down the road and what do we have to expect in terms of  
24 meeting costs. It does not go into sources.

25 MR. COLE: Okay.

1 JUDGE SIPPEL: All right?

2 MR. SOUTHARD: Drafts?

3 JUDGE SIPPEL: On to drafts.

4 MR. SOUTHARD: What we are looking for there is  
5 since the issue of what they did in preparation of their  
6 application, to establish their bona fides with respect to  
7 the application. We would be interested in seeing what they  
8 put into those original drafts, what they felt was  
9 necessary, what they felt was sufficient, and the timing of  
10 the preparation of those drafts is also critical; when did  
11 they start putting together the Reading application, when  
12 did they start considering Reading, that type of thing.

13 JUDGE SIPPEL: Well, the consideration would  
14 certainly --

15 MR. SOUTHARD: Your Honor, I'm sorry.

16 And how that all relates to, for example, the  
17 taping they did, the video taping; any other investigation  
18 that they did with respect to the Reading market; other  
19 visits, Mr. Gilbert's visits to the Reading market.

20 JUDGE SIPPEL: Mr. Cole.

21 MR. COLE: Your Honor, as far as the drafts are  
22 concerned, if the information they are looking for is the  
23 timing, we have provided them with a fairly detailed, I  
24 think, listing of -- from our billing records, the Bechtel  
25 and Cole billing records, which I think provides them



1       precisely the chronological of information they were  
2       looking for.

3               I'm not sure the drafts themselves, and I say  
4       this, let me preface this by saying I can' recall whether  
5       there are in fact any drafts extant in any of the files.  
6       But even if there were, I'm not sure what probative value  
7       they would have because they are going to be drafts. And  
8       whatever was drafted was ultimately superseded for whatever  
9       reason by that which was formally filed with the FCC, which  
10      is a matter of record.

11             JUDGE SIPPEL: Mr. Shook?

12             MR. SHOOK: It seems to be a rather marginal piece  
13      of information at this point in that, as Mr. Cole states, if  
14      you are looking for the time frame, that is going to be  
15      established in part by the billing records, but also by the  
16      other information that's going to be submitted.

17             That being said, the drafts are another piece of  
18      this puzzle. It may not be a very significant piece. It  
19      may not have information which ultimately is used at trial,  
20      but it helps round out the picture.

21             JUDGE SIPPEL: Well, I'm not sure -- I mean, I'm  
22      not convinced at this late date whether rounding out the  
23      picture is really going to be the standard.

24             I'm going to deny (f), but I'm giving you (b),  
25      (c), (d) and (e). I'm saying that to Mr. Southard.

1 MR. SOUTHARD: Thank you, Your Honor.

2 JUDGE SIPPEL: You understand that?

3 MR. SOUTHARD: Yes.

4 JUDGE SIPPEL: Okay. All right now, I've got a  
5 check list here, Interrogatory No. 20.

6 MR. SOUTHARD: Actually --

7 JUDGE SIPPEL: Am I missing something?

8 MR. SOUTHARD: Do you want to do them  
9 individually? Or 20, 21, '2 and '3 are all objected to on  
10 the same grounds as being beyond the scope of the issues.  
11 If you look at them, they are all very clearly related to  
12 information concerning what Adams did to prepare their due  
13 diligence with respect to preparing their application, their  
14 undertakings.

15 JUDGE SIPPEL: Right. I see your point, but so  
16 that the record is clear I want to rule on these things  
17 separately, but you can make your argument, you know, in the  
18 conglomerate. I mean, I see where this is going.

19 Interrogatory 20 is the -- describe what you have  
20 done to challenge, contest to Home Shopping programming, and  
21 I know we did get some -- we certainly got some testimony on  
22 this from when Mr. Gilbert testified in January. I'm not  
23 sure. I think what you are looking for is something very  
24 definitive to say that this is -- this is the universe of  
25 what you have done and there isn't something more that we

1 are going to have to find out about at trial or something.

2 MR. SOUTHARD: Exactly. Exactly, Your Honor. And  
3 also for the same reason you mentioned earlier, to draw  
4 negative inferences or adverse inferences if there are no --  
5 you know, if this is the universe, then there should be  
6 something else, and it's not there.

7 JUDGE SIPPEL: Well, you can always make that  
8 argument, which I have invited. I understand. But I do  
9 know that there has been a lot on this. I know that there  
10 has been a lot on this.

11 Let me hear from Mr. Cole.

12 MR. COLE: Well, Your Honor, I think we responded  
13 to the interrogatories as best we could, and I think that  
14 our answer is certainly consistent with Mr. Gilbert's  
15 testimony in deposition and at trial. And you know, I don't  
16 know what else they want, I mean.

17 MR. SOUTHARD: Your Honor, they didn't answer is  
18 the point. They didn't answer as best they could or not,  
19 they simply objected to each of these interrogatories.

20 MR. COLE: Interrogatory 20, we answered.

21 MR. SOUTHARD: One you answered.

22 MR. COLE: Thank you. That's what we are talking  
23 about?

24 MR. SOUTHARD: Twenty-one, 22, and 23, you did  
25 not.

1 MR. COLE: Well, we're talking about Interrogatory  
2 20. We answered Interrogatory 20.

3 JUDGE SIPPEL: As I see that -- the response has  
4 been, as you have paraphrased it in your motion anyway, is  
5 Adams prepared and submitted its application for Channel 51.  
6 Was that --

7 MR. COLE: That's our response.

8 JUDGE SIPPEL: That was your response?

9 MR. COLE: Yes.

10 MR. SOUTHARD: Twenty-one follows 20 and asks for  
11 detail with respect to the answer in 20. And to that, they  
12 simply objected as being beyond the scope of the issues.

13 JUDGE SIPPEL: I do, I understand that, but I  
14 think that the subject matter is the first thing I wanted to  
15 talk about, Home Shopping programming, and how Adams viewed  
16 Home Shopping programming, and what they have done to  
17 challenge, contest, oppose or otherwise object to it.

18 Now, we know from the January testimony, we  
19 certainly know what Mr. Gilbert's feeling were with respect  
20 to the Home Shopping. We also know what they did with  
21 respect to seeking a Home Shopping channel in Massachusetts  
22 as far as that went, right? Correct?

23 MR. SOUTHARD: Yes.

24 JUDGE SIPPEL: And we also know that they did not  
25 participate in the rulemaking with respect to the viability

1 of Home Shopping from a public interest standpoint. And  
2 maybe the question is what else did they do.

3 MR. SOUTHARD: Well, interesting --

4 JUDGE SIPPEL: Or what else that they didn't to.

5 MR. SOUTHARD: Yes. Interestingly enough, the  
6 first two issues that you just mentioned, and specifically  
7 Boston, for example, is not referenced in their answer to  
8 Interrogatory 20. What did you do to challenge Home  
9 Shopping? They didn't mention Boston in their answer.

10 MR. COLE: Because, Your Honor, that did not rise  
11 to the level of a challenge, contest, opposition or  
12 otherwise objection. It never was filed.

13 JUDGE SIPPEL: I think the problem here is the  
14 problem that I had anticipated, is that these -- getting  
15 information through interrogatories, in common parlance it  
16 generally stinks because you can't get the information  
17 through interrogatories.

18 And you know, you've done a good job. I'm not  
19 criticizing the efforts that you are making. I'm simply  
20 saying that it just is very difficult to make it work.

21 Let me hear from Mr. Shook on this?

22 MR. SHOOK: If we are focusing only on 20, Adams  
23 prepared an answer and is obviously standing by it and is  
24 insisting at this point that it had nothing else to say  
25 relative to 20. So I think 20 is finished and now it's a

1 matter of moving onto the others.

2 JUDGE SIPPEL: I think that we are just flailing  
3 it. You say you've had the -- well, let me very quickly say  
4 I'm going to deny the motion to compel with respect to  
5 Interrogatory 20, and with respect to Interrogatory 21.

6 Now, with respect to Interrogatory 22, this is a  
7 different category, correct? This has to do with  
8 preparation?

9 MR. SOUTHARD: That's right, Your Honor.

10 JUDGE SIPPEL: Well, I've given documents to you  
11 with respect to transmitter sites, with respect to budget,  
12 studio sites, all that information is going to be produced  
13 to you in documentary form, so I'm treating that as mooted,  
14 my earlier rulings is mooted Interrogatory 22, so I'm going  
15 to deny the motion to compel on that also.

16 MR. SOUTHARD: I'm sorry, Your Honor. Does that  
17 include 23?

18 JUDGE SIPPEL: I haven't flipped to 23 just yet.

19 MR. SOUTHARD: And I would point out that there  
20 are matters in 23 which don't appear to be significantly  
21 burdensome, but which would not necessarily appear from  
22 documents; for example, the itemized costs and expenses of  
23 the activities, preparation activities.

24 JUDGE SIPPEL: Mr. Shook, what do you think about  
25 that?

1 MR. SHOOK: Your Honor, looking at Interrogatories  
2 22 and 23, it is conceivable that there are a number of  
3 matters which Adams can answer that will not necessarily  
4 appear in whatever documents it may or may not have at this  
5 point.

6 JUDGE SIPPEL: Well, you're saying including, but  
7 not limited to.

8 MR. SOUTHARD: A specific example, Your Honor,  
9 would be Mr. Gilbert's visits to Reading for which he's  
10 responded he doesn't have documents that would show those  
11 amounts.

12 JUDGE SIPPEL: Right. Well, I was going to get --  
13 that subject is in another area of your motion, but it does  
14 overlap into this too.

15 Okay, well, I would say that I'm going to -- I'm  
16 going to modify my ruling, maybe Mr. Cole will look upon it  
17 as changing my ruling, but certainly you don't have to  
18 answer Interrogatory 22 with respect to those objective  
19 facts that are going to be covered in the documents that you  
20 are going to produce, i.e, financing, studio sites and  
21 transmitter sites.

22 But describe with particularity everything you did  
23 prior to filing your application, to prepare your  
24 application, your objection is that it's beyond the scope of  
25 the issues in the proceeding. Mr. Cole, I don't see that to

1 be the case. I mean, this is certainly not beyond the scope  
2 of the issue, right?

3 The issue is whether or not -- what the  
4 intentions, what the bona fide intentions of the Adams group  
5 was when they prepared and filed the application.

6 MR. COLE: Your Honor, the issue, as I read it and  
7 I'm quoting now from your order adding the issue is,  
8 "...whether the principals of Adams filed or caused to be  
9 filed an application for construction permit in the hope or  
10 expectation of achieving through litigation and settlement a  
11 precedent or other recognition that the Home Shopping  
12 television broadcasting format does not serve the public  
13 interest."

14 And I'm not sure I see exactly how it is that Mr.  
15 Gilbert's trips or information about studio sites,  
16 transmitter sites and so forth reflects on Adams' hope or  
17 expectation of achieving through litigation and setting a  
18 precedent.

19 JUDGE SIPPEL: Well, I certainly do see that. I  
20 mean, in terms of what -- depending on what was done from  
21 day one up until the time they filed the application through  
22 the process of, you know, even beyond that. But we're  
23 really focused on what was done between the time they made  
24 the decision and what they did up to the time that they  
25 filed the application here. Certainly that's clearly



1 relevant, even to the issue as I have framed it. I mean, it  
2 would be relevant to the -- the broader the issue, of  
3 course, the more relevant that the broad information is  
4 going to be, but this is still very much on target.

5 All right, so you will have an opportunity to that  
6 by referring to the documents that you produced on studios  
7 sites, financing, et cetera. However, I do think that  
8 subject to that, which is that the information should be  
9 able to be -- be able to be laid out in an answer to an  
10 interrogatory.

11 MR. COLE: Okay.

12 MR. SOUTHARD: Your Honor, if I may by way of  
13 clarification, are you saying that with respect to  
14 Interrogatory 23, we are entitled to the information  
15 concerning financing?

16 The request was --

17 MR. HUTTON: Twenty-two.

18 MR. SOUTHARD: Well, 23 follows 22.

19 JUDGE SIPPEL: Sure. I mean, but that doesn't  
20 mean that you have to detail financing. The financing is, s  
21 I'm assuming it's going to be, it's going to be able to be  
22 answered very straightforwardly and in a very honest  
23 fashion. If there is more there, then I'm going to be  
24 surprised, but I think that -- I don't have to repeat my  
25 ruling. I'm not going to let this case go down that road.

1 I mean, if evidence is put before me that shows that I have  
2 completely, I have been misled or I'm completely wrong,  
3 that's a whole different category. We're not talking about  
4 that. I mean, that's speculative.

5 So answer the question, answer the question fully  
6 and -- I mean, the directive is to answer the question fully  
7 and completely, except with respect to you make cross-  
8 reference into these documents that you have -- the  
9 objective evidence, and that may -- that may be able to  
10 shortcut some of the otherwise laborious explanations you  
11 would have to give.

12 MR. COLE: No problem.

13 JUDGE SIPPEL: All right?

14 MR. COLE: I understand, but just if I can  
15 understand the last exchange between you and Mr. Southard.  
16 This does not reverse your earlier decision about --

17 JUDGE SIPPEL: Absolutely not.

18 MR. COLE: -- bank financing, but to describe the  
19 actions taken in connection with that as appropriate, but  
20 that will not open the door to financial issues or --

21 JUDGE SIPPEL: Exactly right.

22 MR. COLE: Okay, thank you. I understand.

23 JUDGE SIPPEL: Exactly right.

24 Okay, so that brings me down to 23, and to the  
25 extent that -- yes, insofar as each factual answer that

1     you're giving, to the extent that you are able to, I want it  
2     responded to with respect to (a), with respect to (b); (c),  
3     yeah.

4             MR. SOUTHARD: Your Honor, I'm sorry. (C) is  
5     exactly the type of material that won't come up from  
6     documents.

7             JUDGE SIPPEL: Yes, I don't see -- Mr. Cole, I  
8     don't see that (c), which is itemize cost and expenses,  
9     again, undercuts what I've said earlier about a financial  
10    issue. I'm not trying to compare with how much they think  
11    it's going to cost to what their net worth is, you know.  
12    I'm not worried about that.

13            But I think that in terms of the diligence was  
14    done, or the lack of the diligence that was done in  
15    preparing to get this process filed, I think that they are  
16    entitled to that kind of information.

17            So I'm saying (a), (b) and (c), this is  
18    Interrogatory 23 now -- let me stop with "identifying every  
19    communication to which you were a party to," I'm asking  
20    again on subparagraph (d), Mr. Southard. That's asking for  
21    an awful lot.

22            MR. SOUTHARD: Well, (d), it seems to me, if you  
23    are going to allow them to incorporate by reference to the  
24    documents, (d) would include most of that. They could  
25    simply say, "well, here, here is our letters, here is our

1 communications."

2 JUDGE SIPPEL: Well, is communication limited to  
3 documents or does that mean --

4 MR. SOUTHARD: No, no. It does not, but it  
5 certainly limits the difficulty of responding. To the  
6 extent they had telephone conversations or meetings with  
7 respect to studios or transmitter sites, we would ask that  
8 those be lifted, be identified. This is information that  
9 not only is it of itself relevant, but it provides  
10 background information for us to then go follow-up with  
11 depositions not only of the Adams' personnel, but of the  
12 third parties, the transmitter site operator.

13 JUDGE SIPPEL: Thank kind of -- you know, what  
14 that kind of response is telling me is that you may be  
15 trying to just -- just flip this whole issue. I mean,  
16 you're flipping it into a discovery, giving it discovery  
17 potential that would take it far and above what I have  
18 already authorized.

19 I mean, aside from the fact that May 5 is suppose  
20 to close discovery. I'm just saying that that's a scary  
21 answer.

22 MR. SOUTHARD: I'm not sure I understand you.  
23 Maybe I am jumping the gun into the next motion.

24 JUDGE SIPPEL: Well, that's okay. You can jump  
25 this gun because we have got hearing dates of June 12th and

1 13th to get started on this case, and there wasn't supposed  
2 to be a delay between Phase II and Phase III that would  
3 provide for getting all of this -- all the type of follow-up  
4 information that you are suggesting that that answer can  
5 give you.

6 For example, if you get into listing all  
7 communications and telephone conversations and whatnot,  
8 there may be 10 new names that come up in my hypothetical  
9 now, hypothetically.

10 I'm not, I'm certainly not going to be inclined to  
11 give you authority to go out and depose all those 10 people.

12 MR. SOUTHARD: We understand that, Your Honor.  
13 But for example, communications with respect to the  
14 transmitter site, we anticipate deposing Conestoga, who owns  
15 the site, as we understand it, and we would like to be able  
16 to ask them about those communications. But we won't --  
17 until we know what those communications are, we are somewhat  
18 hamstrung in being able to prepare the questioning of those  
19 witnesses. So we anticipate --

20 JUDGE SIPPEL: All right. All right, I hear you,  
21 I hear you.

22 MR. COLE: Your Honor, if I might interject about  
23 Conestoga.

24 JUDGE SIPPEL: Okay.

25 MR. COLE: Conestoga was not mentioned in any of

1 our answers to interrogatories, but they have known about  
2 Conestoga for six years. If they wanted to get documents  
3 from Conestoga directly, they could have filed a notice to  
4 take depositions supported by a subpoena on April 3rd. By  
5 this time they would have had all their documents, they  
6 would know what Conestoga has in its files, they would be  
7 able to depose Conestoga officials to their hearts'  
8 content, assuming they filed a timely notice to take the  
9 Conestoga officials' depositions, which they did not.

10 They have known about -- they have known the name  
11 of the Conestoga official because it was in Adams'  
12 application six years ago. They didn't do that either.

13 JUDGE SIPPEL: Okay. Mr. Shook?

14 MR. SHOOK: Nothing to add.

15 JUDGE SIPPEL: How come you didn't move on this  
16 faster? Mr. Cole has got a good point.

17 MR. SOUTHARD: Perhaps Mr. Hutton could address  
18 that.

19 MR. HUTTON: Well, I had thought we would be  
20 getting responses to documents. You know, you requested  
21 that we cooperate with the Bureau in filing both pleadings,  
22 the interrogatory requests and the document request, and we  
23 did that. And I had thought we would be getting a complete  
24 response to documents and interrogatories, which would then  
25 outline who the relevant players were, and that we would

1     then proceed with depositions and figuring out the correct  
2     order of depositions.

3             You know, Mr. Cole, when he was litigating the  
4     candor issue against my client, kept insisting on his right  
5     to not start depositions until he had all the relevant  
6     documents.

7             Well, here we have passed the date for completing  
8     discovery, and we don't have all relevant documents because  
9     Mr. Cole has objected, required us to file a motion to  
10    compel.

11            And the fact that we didn't file the notices of  
12    deposition earlier really doesn't make that much of a  
13    difference because we still aren't in a position to do the  
14    depositions because we don't have all the documents.

15            MR. COLE: Your Honor, if I may be heard about  
16    that.

17            With respect to the candor issue, we initiated our  
18    discovery in a timely manner. We pursued it in a timely  
19    manner. And we did announce that we did not want to start  
20    our depositions until we had all our documents, but we had  
21    our document request and our deposition notices done and on  
22    file early on. To the extent that the other side was under  
23    an obligation to produce all of its documents by mid-  
24    February and our depositions were to start in March, it was  
25    all -- everything was initiated in an appropriate and timely

1 manner with the idea that we would get everything in order.

2 That hasn't happened here. We haven't seen -- we  
3 didn't see any deposition notices until May 1, and that was  
4 just three Adams' principals. We haven't seen any  
5 deposition notices for the others, for the other seven that  
6 they are talking about doing even to date, and discovery was  
7 supposed to close on Friday.

8 And again, this is not -- it shouldn't be news to  
9 them that Conestoga and Mr., I think his name is Lubas, were  
10 relevant officials with respect to the site. They were  
11 identified with a telephone number in our application; the  
12 same with the bank official about whom you have declined to  
13 permit them to pursue discovery.

14 JUDGE SIPPEL: Yes.

15 MR. COLE: But that was another issue. All these  
16 folks were identified in our application.

17 JUDGE SIPPEL: Well, I'm going to exercise  
18 discretion on that. I'm going to -- I'm going to require  
19 production of every written communication, and that would  
20 probably cover (e) more than it would really apply to (d),  
21 but the way it's -- the language, the phrasing of (d) with  
22 respect to communication, I will permit, but limit it only  
23 to written communication.

24 And the reason is because if there is an issue, a  
25 significant fact issue with respect to Conestoga, it's going



1 to come out with respect to (a), (b), (c) and I don't see  
2 any purpose for putting -- at this late date, for putting  
3 Adams to the burden of having to track down every slip of  
4 telephone -- you know, you would have to go through  
5 telephone billings and all this type of thing, and I'm just  
6 not going to get into that. It's too late in the game.

7 So, I'm down to Interrogatory 23(a), (b), (c) and  
8 (e) are okay. And (d) is qualifiably -- and when I say  
9 qualifiably denied, it's -- you know, remember what I just  
10 previously said.

11 Now, that covers the categories where there were  
12 outright refusals, or at least that's how Reading has  
13 characterized all of this.

14 We are not into incomplete answers and incomplete  
15 document requests. That's another category. Document  
16 request No. 1, why don't you address that?

17 Again, it seems to be it's Home Shopping  
18 programming and research in connection with Home Shopping  
19 program.

20 MR. SOUTHARD: Your Honor seems to be able to  
21 interpret the interrogatory.

22 JUDGE SIPPEL: They look pretty straightforward to  
23 me.

24 MR. SOUTHARD: Yes.

25 JUDGE SIPPEL: Let me ask Mr. Cole, what is the

1 problem with that one?

2 MR. COLE: Your Honor, could I read it out loud  
3 and see if we understand exactly. I read it out loud at my  
4 office and nobody seems to understand it there.

5 "Every document that --

6 JUDGE SIPPEL: Disinterested.

7 MR. COLE: -- "...concerns or relates to research  
8 conducted by you prior to filing your application in this  
9 matter as to potential construction permit applications in  
10 competition with license renewal applications for television  
11 stations, broadcasting Home Shopping program."

12 Am I supposed to go find out other people who  
13 might have thought about filing competing application  
14 against Home Shopping channels? Am I supposed to -- you  
15 know, what am I supposed to look at?

16 I don't understand the term "potential  
17 construction permit applications in competition with license  
18 renewal applications."

19 JUDGE SIPPEL: Well, the argument now that's being  
20 made is -- in this motion paper, and this, again, is the  
21 documents -- Reading says that the documents are those  
22 concerning or relating to research prior to the filing of  
23 its application, anything that Adams did to investigation  
24 Home Shopping stations and their relative markets.

25 MR. COLE: And that's what they say now, but I

1 don't read -- I mean, we responded to this document -- we  
2 responded to this request as best we could given the request  
3 that was presented to us.

4 JUDGE SIPPEL: Well, but at this point in time  
5 with that explanation that seems to undercut the basis for  
6 your objection. So let's produce the document. That's all  
7 I am trying to get to.

8 MR. COLE: Okay.

9 JUDGE SIPPEL: All right? I mean, you may have  
10 been perfectly within your rights to respond as you did to  
11 that drafted request. The point is, is that they've  
12 clarified it now, and with that clarification I'm going to  
13 require the information to be produced.

14 Now, with respect to document request number two,  
15 potential application. What do you mean by a potential  
16 application, Mr. Southard?

17 MR. SOUTHARD: For example, Boston would be a  
18 perfect example of a potential application, where they --  
19 where they considered a market, they considered filing or  
20 opposing, contesting, and then it just -- the document  
21 request clarifies that intent by specifying at the end  
22 "other than Reading, Pennsylvania."

23 JUDGE SIPPEL: Well, as I remember Mr. Gilbert's  
24 testimony, he said that he asked Bechtel and Cole for a list  
25 of all of the TV stations that was primarily producing Home

1 Shopping any place in the 50 states of the United States.  
2 That's how I remember him testifying, so he's not going to  
3 care, he's not going to care as to any particular individual  
4 market for purposes of this preliminary potential dah-dah-  
5 dah-dah. You see what I'm saying?

6 MR. SOUTHARD: I guess my point is that we are  
7 looking for the documents that were prepared after that.  
8 Once a target has been identified, what did you do?

9 JUDGE SIPPEL: Well, wasn't he asked and answered  
10 that question? He certainly made very specific with respect  
11 to the Massachusetts station, and he gave the reasons as to  
12 why that was considered and then was not followed through.

13 MR. SOUTHARD: That's right, Your Honor, but they  
14 have not produced all of the documents there. With respect  
15 to Massachusetts, they only produced representative  
16 documents.

17 JUDGE SIPPEL: All right. Well, that's a  
18 different question. I mean, representative documents for  
19 Massachusetts might not do it. But for purposes of this  
20 other aspect of the broad, much, much, broader aspect of  
21 your question, I consider that to have been asked and  
22 answered by Mr. Gilbert, unless I am missing something in  
23 his testimony. He said that. He said exactly what I  
24 paraphrased.

25 MR. SOUTHARD: Well, and based on that I suspect

1     there are no documents with respect to any market other than  
2     Boston.

3             JUDGE SIPPEL: Well, I certainly don't expect to  
4     have to ask Mr. Cole to go look for any other documents that  
5     we don't think exists. I mean, that doesn't make -- to me  
6     that's --

7             MR. SOUTHARD: The purpose, the purpose of the  
8     request is to narrow -- is to define that as Boston being  
9     it, and if that's the case, that's fine and we're perfectly  
10    happy with that.

11            JUDGE SIPPEL: Well, I would only stand corrected  
12    if I am misrecalling what Mr. Gilbert already has testified  
13    to and there has been no effort on the part of Adams to try  
14    and recast that answer in some other light that I have  
15    articulated.

16            However, with respect to getting all of the  
17    documents that relate to the Boston, both Boston decisions,  
18    both the Boston decision to go after it or to consider it  
19    anyway. the Boston decision to not consider it any further.

20            Mr. Cole, can you respond to that? I mean, in  
21    other words, the representative documents just might not do  
22    it.

23            MR. COLE: Well, again, I'm not sure what they are  
24    looking for, Your Honor, and I don't recall withholding a  
25    whole lot of documents. I believe there were one or two

1 letters between me and Mr. Gilbert, I think, but again I  
2 have not checked my files on that. But what I tried to  
3 produce for them, because again I had difficulty  
4 understanding exactly what the question was aimed at, but I  
5 expected it was the Boston application. I wanted to at  
6 lease give them information that would give them, you know,  
7 at least what I thought they were looking for.

8 And to the extent they wanted information that,  
9 you know, can establish that there was an application  
10 prepared, who the engineer was, when the work on it was  
11 begun, when the work on it was -- ran through, and what the  
12 final engineering because Mr. Gilbert, as I recall,  
13 testified that there was a site problem which prevented the  
14 filing of the application, I believe the engineering I  
15 provided to them includes an application dated -- a version  
16 of Mr. Mullaney's engineering data end of February, which is  
17 right up against the deadline, which there was a short  
18 spacing. And you know, I don't know what else they are  
19 looking for.

20 JUDGE SIPPEL: Well, they are looking for  
21 everything that relates to that subject that go beyond  
22 representative documents and that are not privileged. I  
23 think that's the long and short of it.

24 So if you've got privileged documents, we'll get  
25 into that later. But you know, I need some kind of a list

1 of what you claim to be privileged documents.

2 MR. COLE: Would that include a draft of the legal  
3 portion of the application?

4 JUDGE SIPPEL: Well, we didn't -- you mean the --

5 MR. COLE: We've excluded drafts with respect to  
6 the relevancy of it.

7 JUDGE SIPPEL: I'm going to continue to exclude  
8 drafts, but correspondence, you know, and that's -- all  
9 right. So you are entitled to get more than representative  
10 documents with respect to Massachusetts, short of drafts of  
11 the application forms.

12 Now, document request number six, this is a very  
13 critical area. This has to do with determination as to the  
14 public -- as to Adams' perception on WTVE programming  
15 meeting or not meeting the public interest of Reading. And  
16 I take it what you're looking for is basically the universe  
17 of documents that exist with respect to that subject.

18 MR. SOUTHARD: That's right, Your Honor.

19 JUDGE SIPPEL: Particularly prior up to filing the  
20 application.

21 MR. SOUTHARD: Absolutely.

22 JUDGE SIPPEL: Now, what is Adams' position on  
23 that?

24 MR. COLE: I believe we have responded to it, Your  
25 Honor.